THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No:15928 of 2007

DATED:30-07-2007

BETWEEN:

Smt.A.Sharada Devi & 3 others.

..... PETITIONERS

AND

The Commissioner of Police,
Hyderabad & 9 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioners as well as the learned Government Pleader for Home appearing for the respondents.

2. Petitioners seek a writ of mandamus directing the official respondents 1 to 3 to grant police aid to safeguard the property of the petitioners viz., premises bearing No.12-11-526, Warasiguda, Secunderabad in terms of the judgment and decree, dated 28-09-2000, made in O.S.No.411 of 1999 on the file of the III Senior Civil Judge, Secunderabad.

3. It is the case of the petitioners that the above suit filed by them seeking permanent injunction restraining the unofficial respondents from interfering with their peaceful possession and enjoyment of the suit schedule property bearing H.No.12-11-526, Warasigud;a, Secunderabad was decreed on 28-09-2000. It is stated that against the said order of injunction, Civil Miscellaneous Appeal has been filed by the unofficial respondents and the same was also dismissed and thus the said order of injunction has become final. Whileso, when the unofficial respondents started interfering with their peaceful possession petitioners filed E.P.No.123 of 2006 for execution of decree under Order 21 Rule 11 r/w Rule 141(2) of the Civil Rules of Practice stating that the decree was passed in the said suit on 28-09-2000 and the relief

prayed in the said Execution Petition was to direct the Station House Officer, Chilkalguda police station to grant police aid restraining the Judgment-debtor from interfering with the suit schedule property. The said E.P.No.123 of 2006 was dismissed by impugned order, dated 30-03-2007, on the ground that as per the judgment of this Court in ***SANGU BRAHMAN & OTHERS v. STATION HOUSE OFFICER, GARIDAPALLI POLICE STATION, NALGONDA DISTRICT & OTHERS***[1] if there is violation of decree granted in a suit for perpetual injunction the aggrieved party can file Execution Petition under Order 21 Rule 37 CPC. However, it cannot be said that execution is the only remedy in such an event and once a Court of competent civil jurisdiction adjudicates upon the rights of the parties, the enforcing agencies of the State are under obligation to respect the same and ensure that the rights so declared are not flouted by others.

4. It is stated that as there was no specific observation in the said judgment about the right of the decree-holder to file Execution Petition seeking police aid it is for the constitutional Court to grant such a relief. It is not clear from the recitals in the affidavit on what date the unofficial respondents have interfered with the petitioner's possession. As the petitioners have not approached the police at all the allegations made by them are only bald allegations and therefore police aid cannot be granted. Therefore, I am of the opinion that the impugned order does not suffer from any infirmity, legal or otherwise except with regard to the opinion expressed by the Executing Court that the remedy available to the

GPA holder is only to approach the constitutional Court but not the Civil Court, which is not correct.

5. A Division Bench of this Court in ***SATYANARAYANA TIWARI v. STATION HOUSE OFFICER, SANTHOSHANAGAR POLICE STATION, HYDERABAD & OTHERS***[2] observed that though there is no express provision in the Code for enforcement of the order of injunction, the aggrieved party himself could approach the police authorities to prevent obstruction to the enforcement of the order of permanent injunction or to the exercise of the right which he derives under the order of the Court, and if such person brings such interference to the notice of the Court for enforcement of the order, the Court has also got inherent power under
Section 151 CPC to direct the police authorities to render necessary aid to the aggrieved party for implementation of the Court's order. Thus, the Division Bench of this Court was of the opinion that to prevent the abuse of process Civil Court has got ample jurisdiction to pass orders under
Section 151 CPC. Therefore, I am of the opinion that the said observation of the Executing Court that the Civil Court has no power to pass an order granting police aid is not correct.

6. Insofar as the merits of the case are concerned, I am of the opinion that there is nothing on record to show that the unofficial respondents interfered at any time. Admittedly, petitioners have not made any complaint before the police after passing of the decree and the petitioners never approached the police to extend

necessary police protection/aid. Therefore, I am of the opinion that the petitioners are not entitled for any relief in the absence of any requisition or representation made before the concerned police seeking necessary police aid.

7. Accordingly, Writ Petition is dismissed with a liberty to the petitioners to make a representation/requisition before the concerned police about the alleged interference of the unofficial respondents and if the police do not render necessary police protection it is open for the petitioners to file fresh application before the Executing Court under
Section 151 CPC seeking necessary police aid. There shall be no order as to costs.

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V.ESWARAIAH,J

30th July, 2007.
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[1] 2006(2)ALT 322

[2] AIR 1982 A.P.394